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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 MICHAEL RONZONE,

9 Plaintiff,

10 v.

11 AURORA LOAN SERVICES, LLC, et
12 al.,

13 Defendants.

CASE NO. C11-5025BHS

ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS AND RELEASE
RECORDED INSTRUMENTS

14 This matter comes before the Court on Defendants Aurora Loan Services, LLC,
15 ("Aurora") and Mortgage Electronic Registration Systems, Inc.'s ("MERS") motion to
16 dismiss and to release recorded instruments (Dkt. 30). The Court has reviewed the briefs
17 filed in support of and in opposition to the motion and the remainder of the file and
18 hereby grants the motion for the reasons stated herein.

19 **I. PROCEDURAL HISTORY**

20 On January 10, 2011, Plaintiff Michael Ronzone ("Ronzone") filed a verified
21 complaint for quiet title against Aurora alleging various improprieties in the origination,
22 servicing and foreclosure of his loan, including those arising under Article III of the U.S.
23 Constitution (Dkt. 1, ¶ 6), the Seventh, Thirteenth and Fourteenth Amendments thereto
24 "regarding involuntary servitude, enticement to slavery and other civil rights matters"
25 (*id.*, ¶¶ 9-10), the Truth in Lending Act ("TILA"), 16 U.S.C. § 1601, *et seq.*, the Real
26 Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2601, *et seq.*, the Home
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1 Ownership Equity Protection Act (“HOEPA”), 15 U.S.C. § 1602, *et seq.* (*id.*, ¶ 12), and
2 other various federal, state and common law claims, including “regarding corporeal
3 substance of Plaintiff’s sweat equity grounded in international and Common Law
4 jurisdiction.” Dkt. 1.

5 On July 27, 2011, Aurora filed a motion to dismiss and to release recorded
6 instruments. Dkt. 13. On September 13, 2011, the Court granted the motion, granted
7 Ronzone leave to amend his complaint, and ordered Ronzone to show cause regarding a
8 lis pendens and mechanic’s lien. Dkt. 22. On September 26, 2011, Ronzone responded.
9 Dkt. 23. On September 27, 2011, Aurora replied. Dkt. 24.

10 On September 30, 2011, Ronzone filed an Amended Complaint adding MERS and
11 Cal-Western Reconveyance Corporation of Washington (“Cal-Western”) as Defendants.
12 Dkt. 26. On December 21, 2011, Aurora and MERS filed a motion to dismiss the
13 amended complaint. Dkt. 30. On January 9, 2012, Ronzone responded. Dkt. 32. On
14 January 13, 2012, Aurora and MERS replied. Dkt. 33.

16 II. FACTUAL BACKGROUND

17 Ronzone owns the property commonly known as 4801 W. Maple Lane Circle
18 N.W., Gig Harbor, Pierce County, Washington 98335 (the “Property”). Dkt. 1, ¶¶ 2, 4,
19 21; Ex. F. On March 9, 2007, he secured a loan from Pierce Commercial Bank in the
20 amount of \$428,000.00. *Id.*, Exh. C at 1. The loan was evidenced by a note dated March
21 9, 2007, payable to Pierce Commercial Bank (the “Note”). *Id.* ¶ 6; Dkt. 14, Exh. 1. The
22 Note was secured by a Deed of Trust on the Property dated March 9, 2007, and recorded
23 on March 19, 2007, under Pierce County Auditor’s No. 200703190687 (the “Deed of
24 Trust”). *Id.*, Exh. 2.

25 Aurora is presently the owner and holder of the beneficial interest in the Deed
26 of Trust. Dkt. 1, Ex. C, ¶ 5. On July 16, 2010 Aurora was assigned beneficial interest in
27 the Deed of Trust over three years after that Deed of Trust was recorded (the “Aurora
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1 Assignment”). The Aurora Assignment was recorded on September 16, 2010, under
2 Pierce County Auditor’s No. 102009160021. Dkt. 14, Exh. 3.

3 In 2010, Ronzone defaulted on his mortgage loan payments, and non-judicial
4 foreclosure proceedings were commenced. Dkt. 1, Ex. C at 7. This included service on
5 Ronzone of a Notice of Trustee’s Sale, dated September 20, 2010, and recorded on
6 October 13, 2010, as Pierce County Auditor’s No. 201010130523. Dkt. 14, Exh. 4. On
7 October 15, 2010, Ronzone caused to be recorded a Lis Pendens notice and a “Mechanics
8 Lien Claim.” Dkt. 1, Exh. B.

9 III. DISCUSSION

10 A. Motion to Dismiss

11 Motions to dismiss brought under Rule 12(b)(6) of the Federal Rules of Civil
12 Procedure may be based on either the lack of a cognizable legal theory or the absence of
13 sufficient facts alleged under such a theory. *Balistreri v. Pacifica Police Department*, 901
14 F.2d 696, 699 (9th Cir. 1990). Material allegations are taken as admitted and the
15 complaint is construed in the plaintiff’s favor. *Keniston v. Roberts*, 717 F.2d 1295, 1301
16 (9th Cir. 1983). To survive a motion to dismiss, the complaint does not require detailed
17 factual allegations but must provide the grounds for entitlement to relief and not merely a
18 “formulaic recitation” of the elements of a cause of action. *Bell Atlantic Corp. v.*
19 *Twombly*, 127 S. Ct. 1955, 1965 (2007). Plaintiffs must allege “enough facts to state a
20 claim to relief that is plausible on its face.” *Id.* at 1974. When deciding a motion to
21 dismiss, the Court’s consideration is limited to the pleadings. Fed. R. Civ. P. 12(d).
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23 In this case, Defendants move to dismiss all of Ronzone’s claims. Dkt. 30.
24 Ronzone only responded to a portion of Defendants’ motion stating that the lawsuit is
25 primarily an action under the Fair Debt Collection Practices Act (“FDCPA”) with
26 secondary violations of the Washington Deed of Trust Act (“DTA”) and various tax
27 codes. Dkt. 32 at 1-2.
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1 With respect to the FDCPA, the act applies to “debt collectors.” 15 U.S.C. §
2 1692a(6). The FDCPA’s definition of debt collector does not include the consumer’s
3 creditors, a mortgage servicing company, or any assignee of the debt. *See Lai v.*
4 *American Home Servicing, Inc.*, 680 F. Supp. 2d 1218, 1224 (E.D. Cal. 2010) (quoting
5 *Perry v. Stewart Title Co.*, 756 F.2d 1197, 1208 (5th Cir. 1985). Ronzone has failed to
6 allege or show that either Aurora or MERS is a debt collector under the FDCPA. *See*
7 Dkt. 26 at 7. Ronzone merely argues that Defendants are required to divulge the most
8 recent price paid for the Note/Loan so that Ronzone may satisfy his debt by paying this
9 lower amount. Ronzone’s argument is frivolous and wholly without merit. Therefore,
10 the Court grants Defendants’ motion to dismiss Ronzone’s FDCPA claim.
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12 With regard to the DTA, the Court has already found that Ronzone’s claims fail as
13 a matter of law. Dkt. 22 at 6. In the amended complaint, Ronzone includes a paragraph
14 that alleges Aurora has violated the DTA because it is involved in “factoring.” Dkt. 26 at
15 10. Ronzone has failed to state a cognizable legal claim. Therefore, the Court grants
16 Defendants’ motion to dismiss Ronzone’s DTA claim.

17 With regard to the various tax code violations, Ronzone alleges that Defendants
18 have failed to pay the gift tax when the loan was purchased from the original lender. Dkt.
19 32 at 8-12. Ronzone has failed to state a cognizable legal claim. Therefore, the Court
20 grants Defendants’ motion on Ronzone’s tax code claims.

21 With regard to the remainder of Ronzone’s claims, these are similarly frivolous
22 and Ronzone has failed to respond to Defendants’ request for dismissal. The Court
23 considers Ronzone’s failure to respond as an admission that Defendants’ motion has
24 merit. Local Rule CR 7(b)(2). Therefore, the Court grants Defendants’ motion to dismiss
25 the remainder of Ronzone’s claims.

26 With regard to relief, the Court has allowed Ronzone an opportunity to cure the
27 deficiencies in his complaint. Dkt. 22. Ronzone has failed to do so and the Court finds
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1 that allowing Ronzone another opportunity to amend the complaint would be futile.

2 Therefore, the Court dismisses Ronzone's claims against Defendants.

3 **B. Recorded Instruments**

4 In his response to the Court's order to show cause, Ronzone argues that the issue is
5 not properly before the Court because Defendants have not answered his complaint. Dkt.
6 23. This argument is wholly without merit. Therefore, the Court orders the lis pendens
7 and the mechanic's lien to be extinguished.

8 With regard to an award of attorney's fees, the Court finds that an award is not
9 warranted. However, if Ronzone files a subsequent encumbrance that is similarly
10 unjustified, Ronzone is informed that the Court will likely award costs and fees.


11 **C. Cal-Western**

12 If a defendant is not served within 120 days after the complaint is filed, the court
13 must dismiss the action without prejudice against that defendant. Fed. R. Civ. P. 4(m). It
14 is unclear whether Ronzone has served Cal-Western. Therefore, the Court orders
15 Ronzone to show cause why his claims against Cal-Western should not be dismissed
16 without prejudice. Ronzone must respond by March 1, 2012 or the Court will dismiss his
17 claims.
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19 **IV. ORDER**

20 Therefore, it is hereby **ORDERED** that Defendants' motion to dismiss and to
21 release recorded instruments (Dkt. 30) is **GRANTED**. Ronzone's claims against Aurora
22 and MERS are **DISMISSED**. Ronzone must respond to the order to show cause by
23 March 1, 2012.

24 DATED this 14th day of February, 2012.

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26 
27 BENJAMIN H. SETTLE
28 United States District Judge